DOCUMENT RESUME

ED 329 007 EA 022 731

AUTHOR Dagley, Dave; Veir, Carole A.
TITLE Personal Privacy in Personnel Files: Application of Open Record Acts to Information in School District Personnel Files.
PUB DATE Aug 90
NOTE 32p.; Paper presented at the Annual Meeting of the National Council of Professors of Educational Administration (Los Angeles, CA, August 12-17, 1990).
PUB TYPE Information Analyses (070) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Case Records; Civil Liberties; *Confidential Records; Court Litigation; Disclosure; Elementary Secondary Education; *Freedom of Information; *Privacy; *School Districts; *School Personnel

ABSTRACT

School district personnel files were traditionally considered private. Since the advent of federal and state open record acts, the private nature of personnel records has come into question. All court cases since 1966, in which a member of the public wanted access to public employee information and a personal privacy exemption was raised as a defense objection, were reviewed. Directory information, payroll and absence records, grievance summaries, college transcripts, performance evaluations, employment application materials, resumes, tenure files, reports from private consultants, and settlement agreements were all found as disclosable unless statutory language or court interpretations have created exemptions. Personal information such as medical conditions, family matters, and substance abuse have been defined as intimate in nature and not disclosable. Policy implications school districts should consider include adequate preparation for information requests before they are received and procedures to follow after a request is made. (80 references to court cases) (EJS)

PERSONAL PRIVACY IN PERSONNEL FILES: APPLICATION OF OPEN RECORDS ACTS TO INFORMATION IN SCHOOL DISTRICT PERSONNEL FILES

Manuscript submitted by

Dave Dagley, Ph.D.
Associate Professor
Department of Educational Leadership
232-H Education Building
University of Alabama at Birmingham
Birmingham, Alabama 35294

and

Carole A. Veir, Ed.D.
Assistant Professor
Department of Educational Administration
310 Education Building
University of Texas at Austin
Austin, Texas 78712

AERA - Aug 1990 - Los Angeles

INTRODUCTION

School district personnel files were traditionally considered the property of the school district, and information maintained in them was considered private, even from the subjects of the file. It was presumed that only those with a "need to know," usually supervisors of the employee, were permitted access. In recent years, school districts have permitted employees to view information in their own files. However, this information was not to be made available to members of the public.[1]

With the advent of federal- and state-level open records acts, the private nature of information kept in school district personnel files has become open to question. Increasingly, courts are requiring public school districts to open up personnel files and share their contents with newspaper reporters, parents, and other citizens who want to know more about school employees. Certainly, not all information should be or is required to be open to the public. Court activity in the recent past can guide in creating a better understanding of how personal privacy relates to personnel-related information kept by school districts.

INTERPRETATIONS BY THE COURTS

School districts, like most public employers, maintain a broad array of information within their personnel files. The types of information then sought by members of the public have varied widely also. For this commentary, all

court cases since 1966, in which a member of the public wanted access to public employee information under an open records act and in which a personal privacy exemption was raised as a defense to bar disclosure, were reviewed. Court cases involving public employers like municipalities and hospitals were reviewed for this commentary also, because the open records laws apply to all public employers, including school districts. The following discussion is organized around the different types of information sought from a public employer.

Directory Information

Requests for the names or addresses of school or university employees often originate from attempts by unions to contact all employees or from commercial marketing by representatives of insurance companies or other enterprises. Such requests often seek lists of names or addresses, sorted by job titles. In privacy statutes like the Family Educational Rights and Privacy Act, such information, applied to student data, is considered directory information and is usually available to the public.[2] Courts at both the federal and state level have required the release of directory information in public sector personnel files.[3] When a teacher's association sought disclosure of the names and addresses of employees of a regional school district, as well as the names and addresses of substitutes who worked during a strike, New Hampshire's highest court ordered release of the information.[4] Similarly, the Massachusetts Supreme Court

granted an association request to view name, home address, and job classification information on school district employees. The court did not consider the information that was sought "intimate details" of a "highly personal" nature and ordered its disclosure.[5] Two Florida Appeals panels reached the same conclusion where union organizers sought names and addresses of city employees.[6] In a West Virginia case, that state's highest court determined that names and addresses are not personal or private facts but are public in nature, because they constitute information normally shared with strangers and are ascertainable by reference to many publicly obtainable books and records.[7]

A situation in Oregon involved the request of a newspaper to obtain the names and addresses of replacement coaches who had worked for the school district during a strike. The district had placed the information in personnel files, anticipating that disclosure would be precluded by Oregon law. Reaching a conclusion which differed from other jurisdictions, the Oregon Appeals court required the district to disclose names, but not the addresses, of the replacement coaches.[8] The coaches had submitted their addresses in confidence; in this situation the court felt that addresses were not information that would normally be shared with strangers and that release of the addresses would be a violation of their privacy. The Oregon Supreme Court

reversed, however, and required the release of both names and addresses.[9]

An Appellate Illinois court reached a different conclusion about directory information.[10] The Illinois Federation of Teachers asked for directory information from the state retirement system. The court found the directory information to be covered by two specific exempting statutes, one which exempted files about persons requiring services from a public body and another specifically exempting personnel files.[11]

In most situations school districts would be required to disclose directory information like names, addresses, job titles, and job descriptions. However, in states with specific exempting language in the law, directory information would not be disclosable.

Employment Application Materials

In a number of situations a newspaper or other member of the public sought information to look over the shoulder of public employers and review their employment decisions. An Iowa court considered the request of a newspaper to have access to applications from five individuals who sought the position of city manager. Using a balance test similar to that used by federal courts, the Iowa court ordered release of the employment applications.[12]

In a California case involving public hospitals, information was sought that would normally be on resumes. The hospitals, as health care providers under the state Medi-

Cal system, wanted information about the education, training, experience, awards, previous positions and publications of a system physician auditor. The California appeals court determined that such information is routinely presented in professional and social situations and would therefore not implicate any personal privacy exemption in that state's public records act.[13]

Following a newspaper request for the names and qualifications of candidates for a college presidency, a Texas appeals court determined that these were not facts of a highly embarrassing or intimate nature which, if publicized, would be highly objectionable to a reasonable person. The court ordered release of the information.[14]

The Alabama Supreme Court considered a dispute in which a former county commissioner was hired as a manager of the same county's public works system. A newspaper sought application materials for all the candidates, to provide a public review of the county commission's decision. In Alabama, exemptions for privacy are provided by common law, not by statute. The court ordered release of the records.[15]

Where the courts have reviewed requests to learn more about job searches conducted by public employers, the courts have ordered release of application materials, resumes, or names and qualifications of the candidates.[16] While the application materials of unsuccessful candidates would not normally end up in a physical personnel file, those materials do become public records managed by the personnel office

which would usually have to be released under an open records act.

Pay Records

A number of courts have looked at requests to release pay records. For the most part, courts rule that the salary information must be released. A Michigan appeals court ruled that salary information was not exempt from disclosure under the privacy exemption.[17] Likewise, the news media was entitled to inspect and copy the village payroll records in a New York case.[18] The Utah Supreme Court reached the same conclusion in two cases. Unless it could be shown that release of the salary information would create a significant loss of privacy to the employee, salary information had to be disclosed.[19]

The same principles extend to consulting payments. A Denver newspaper wanted information about payments made by foreign governments to faculty members in the University of Colorado School of Medicine, who had consulted in establishing a hospital and medical school overseas. The Colorado Appeals court required the release of university documents related to the payments.[20]

Absence Records

Occasionally, members of the public have attempted to obtain information about employee absences. The Massachusetts Supreme Court was asked to determine if individual absentee records of school employees, which showed

only the dates and generic classifications of absences, were records of a private nature under the state records law. The court concluded that the information was not personal and had to be disclosed.[21]

In investigating an allegation that a public employee had received pay for unexcused and unauthorized absences from work, a member of the public sought attendance records cards. The Pennsylvania Commonwealth Court ordered release of the records, even though the information "might have revealed disciplinary actions affecting the reputation of the employee or compromising the concept of personal security of an employee," which conflicts with the Pennsylvania privacy exemption language.[22]

A newspaper wanted records released which contained statistical or factual tabulations of data on the number of days and the dates of absence for a named detective during the month of January, 1983. The New York Appellate court ordered release of the information.[23]

However, a New York Superior Court reached a different conclusion, when a newspaper asked for the number of sick time hours accumulated by individual employees. The court decided that the release of such information would result in an unwarranted invasion of personal privacy.[24]

The disclosability of absentee records appears to be subject to an inquiry of the facts of each individual case and the extent to which the individuals right to privacy is

violated, through the disclosure of specific information about the individual's medical condition.

Transcripts

In a recent Texas case, a member of the public wanted to see a schoolteacher's college transcripts, to make a personal estimate of the teacher's competency and preparation to teach. The school district denied access, citing the teacher's privacy interest in the transcripts. Significant in the district's defense was the allegation that the teacher's college transcripts were protected from disclosure under the federal privacy act related to student records. The Court of Appeals for the Fifth Circuit placed the balance in favor of the public's right to know about the competence of the teacher, and ordered the disclosure of the transcripts.[25]

Grievances

Courts in two states have addressed the issue of disclosability of grievance records. In Florida, a collective bargaining agreement mandated confidentiality of grievance records generated through the agreement. A Florida appeals court ruled that the grievance records were public records and the district could not contract through the bargaining agreement to make something confidential that was not confidential. The court ordered disclosure of the grievance records.[26] A New York court reached the same

conclusion in a discovery action, but required that the names of participants in grievances be redacted from the record.[27]

Materials Related to Performance Evaluations

One outcome of the public's increased interest in accountability is the desire to see the evaluation materials of individual school employees. A number of courts have looked at the disclosability of these types of materials. A Washington court ruled that information about public, on-duty job performances should be disclosed.[28] However, on state constitutional grounds, a Louisiana appeals court ruled differently, in a municipal case. A radio station brought an action to compel the mayor to make job evaluations of city department heads available. The appeals court decided that the evaluations were public records, but not disclosable due to the Louisiana state constitution, which specifically grants a right to privacy. The court determined that releasing the evaluation materials would have been an unconstitutional invasion of privacy.[29]

A Massachusetts school district maintained records of student evaluations of teachers. A member of the public sought access to the evaluation. The Massachusetts Appeals Court ruled that student evaluations were personnel information under Massachusetts law and, as such, were not public records under the law. Not being public records, no disclosure was required.[30]

The Connecticut Supreme Court decided that teacher performance evaluations were not protected by the state freedom of information act and had to be disclosed to the education association in connection with a grievance it had filed.[31] Subsequent to this, the Connecticut General Assembly enacted legislation making it clear that records of teacher performance and evaluations are not public records and therefore are not subject to disclosure under the public records law. Litigation pending during this change in statute dealt with a newspaper request for a superintendent's files related to administrative goals and objectives, improvement plans for administrators, and individual evaluations of teachers. As a result of the law change, the Connecticut Supreme Court remanded proceedings with instructions to rule consonant with the law change.[32]

Two New Jersey courts ruled that written evaluation materials of applicants were not required to be kept and were therefore not public records under the law. Consequently, the evaluation materials did not have to be disclosed.[33] However, the Iowa Supreme Court decided that the statute governing confidentiality of public records did not prohibit a teacher, who had been served notice of nonrenewal, from obtaining by subpoena all evaluations of teachers in the school system made by the superintendent or principal within the last three years, for use in a private termination

hearing before the board.[34]

The cases in the sample lead to the conclusion that statutory language will dictate the disclosability of evaluation materials. The first threshold question is whether or not the materials are part of the public record. If they are not considered part of the public record, they need not be disclosed. If they are considered by the court to be part of the public record, then the second threshold is reached. If there is legislative language creating a blanket exemption for personnel files in general, or legislative language exempting evaluation materials specifically, then the materials need not be disclosed. Otherwise, the evaluation materials are disclosable.

University Tenure Files

A recent case before the U.S. Supreme Court looked at the right of a university to withhold information related to the evaluation for tenure of a junior faculty member.[35] After the University of Pennsylvania's Wharton School of Management denied tenure to Rosalie Tung, an associate professor, Ms. Tung filed charges of discrimination with the Equal Employment Opportunity Commission. Ms. Tung alleged sexual harassment by the department chairman, and discrimination based upon race and sex. Specifically, Ms. Tung charged that five male faculty members with less qualifications had received tenure, while she had not, even though a majority of

the faculty had voted in favor of awarding her tenure.

On her behalf, the EEOC sought disclosure of all documents related to her tenure decision and the tenure files of the five male faculty members identified in the charge as having received more favorable treatment than Tung. The university refused to release the materials, citing a common law requirement not to disclose, as well as an "academic freedom" right under the First Amendment to not disclose.

In a unanimous decision, the U.S. Supreme Court determined that a university enjoys no special privilege, grounded in the common law or in the First Amendment, against disclosure of the tenure review materials. The University was required to release the materials to the EEOC.[36]

An earlier, similar opinion was obtained in a New York court, in which a faculty member sought access to the curriculum vitae of all faculty of the college who had been promoted to full professor during the prior five years. The court determined that the credentials could be released with deletion of such identifying information as names, addresses, and social security numbers.[37] Clearly, tenure and promotion files within colleges and universities are subject to disclosure.

Investigative Reports and Reprimands

Occasionally, officers of public bodies must investigate allegations of wrongdoing and, if wrongdoing is

found, issue reprimands. Whether or not investigative reports or reprimands must be disclosed under open records acts is a question which has come before the courts.

A college football coach in Florida had been investigated for wrongdoing. A Florida appeals court ruled that the investigative report was confidential and the newspaper seeking access could be refused, even if the report showed criminal acts.[38]

The Pennsylvania Commonwealth Court noted that reports of official investigations and documents, which could operate to prejudice a person's reputation are excluded from the definition of "public record" in the state freedom of information law. Therefore, an official police inquiry into alleged wrongdoing was not disclosable.[39]

A federal district court in Texas was asked to prevent disclosure of information in NCAA and Southwest Athletic Conference files which related to an investigation of alleged recruiting violations. The court ruled that Texas common law did not prevent disclosure, and that the public's legitimate interest in the information required disclosure of the files.[40]

A New York court ruled that disclosure of written reprimands of police officers, contained in a report about an investigation into alleged wrongdoing would not result in an unwarranted invasion of privacy, and ruled that the report

must be disclosed.[41]

From the cases reviewed, it can be seen that the only case involving the disclosure of official inquiries into wrongdoing in an education context is at the collegiate level. For two of the cases, disclosure was prohibited; for the other two, disclosure was required. It can be fairly stated that the more private and intimate the information, triggering a common law or federal constitutional right to privacy, the less disclosable the information. However, at some point the district school board or other public body may need to deal publicly with an infraction. When information must be discussed at an open meeting of a public body, it is no longer private and becomes public information.[42] Therefore, the record created by the school board or other public body, which reflects its official action in dealing with the infraction, will be disclosable.

Reports by Private Consultants

School districts often hire outside consultants to tend to particular personnel matters. Whether the reports of the consultants are subject to the public records law and whether they are disclosable are questions that have come before the courts in several states.

A consultant "headhunter" conducted a search for a superintendent for a school board. The Florida appeals court determined that the personal files about the candidates which were kept by the consultant was the property of the consultant, was not a public record, and was therefore not

subject to disclosure. However, the consultant's report to the board was a public record and disclosable.[43]

Also in Florida, a public electric authority had a psychologist firm interview applicants for the position of managing director. The psychologists created handwritten notes and impressions about the applicants. When a member of the public sought release of the information under the state freedom of information law, the court ruled that disclosure of the information would unlawfully deprive applicants of fundamental privacy interests, and forbade disclosure.[44]

Rhode Island's Supreme Court was asked to rule on the disclosability of a management study of elementary school operations. The consultants had looked primarily into the job performance of the school principal. The court found the study to fall under the exemption for personnel files under the state records law, and prohibited its disclosure.[45] It must be remembered, however, that Rhode Island's exemption for personnel files is absolute. Personnel files are protected from disclosure in Rhode Island, without submission to a balance test or other legal test which might permit disclosure.[46]

From these cases, it can be seen that the notes and data collected by outside consultants tend not to be disclosable, while the final report to the board may be disclosed. Whether or not the report is disclosable turns on whether the information provides information that is of a

very personal nature, triggering a common law or constitutional privacy protection, or if it is specifically protected by an exemption in the law.

Settlement Agreements

Settlement agreements are commonly created between public agencies and others, to outline the terms and conditions in which a dispute between the parties has been settled. A usual feature in such agreements is language requiring confidentiality, to protect the parties to the agreement. Courts in a number of states have been asked to review the disclosability of such agreements.

After an investigation of sexual misconduct against a teacher, the board and teacher reached an agreement terminating the teacher's employment. A condition of confidentiality was written into the agreement. A Michigan appeals court ruled that the privacy exemption in the state's records law did not preclude disclosure of the requested information, if individual identifying information was redacted.[47]

Many superintendents and former superintendents have negotiated settlement agreements with school boards which terminate their relationship with the board, and a common feature of those agreements is a nondisclosure clause. A Missouri appeals court decided that the exclusion for individual identifiable personnel records in the Missouri records law did not protect disclosure of the termination agreement between a board and superintendent. The court

noted that the exception for personnel decisions was designed to protect the decision making process, but not the decision itself. Thus, the terms and conditions of the settlement agreement between the board and superintendent could not be withheld from the public.[48]

In Maine, a newspaper publisher sought disclosure of a termination agreement between the University of Maine and its former basketball coach. Although the portions of the document relating to the coach's medical condition or medical treatment were determined by the Maine Supreme Court to be exempt from disclosure under the state's freedom of information act, the remainder of the agreement was disclosed.[49]

Two cases speak to procedural matters related to disclosability of settlement agreements. The Iowa Supreme Court ruled that the confidentiality of a termination agreement expired with the public act of the board to terminate the employee.[50] In a Florida case, the public agency feared that public knowledge about the terms of a settlement agreement might affect pending litigation. The Florida appeals panel determined that this was not an adequate reason for sealing the terms of the settlement agreement and was therefore an abuse of discretion. The court ordered release of the information in the settlement agreement.[51]

In a case separate from the employment context, an Alaska school district had settled a dispute over a contract

with a private company in removing and replacing fireproofing materials. The state's highest court concluded that the

nondisclosure of terms of the settlement agreement was unenforceable.[52]

The negotiations prior to the creation of a settlement agreement may be shielded from public view. However, once the agreement is struck, the settlement agreement is disclosable under state open records acts.[53]

Certificate Revocation Records

In order to prepare an investigative report on teacher sexual misconduct with students, a publishing company asked the Washington Superintendent of Public Instruction for records specifying the reasons for teacher certification revocations in the prior ten years.[54] The Washington Supreme Court upheld the lower court's direction to release the records, with student identifying information stricken.[55]

Although the Washington Supreme Court mentioned in the last cited case that the states of Florida, Nebraska, and Georgia allow investigation of teachers while disclosing records, no other court cases were found which dealt with this issue.[56] It seems likely that the disclosability of certificate revocation records responds to the same principles of disclosure that exist for settlement agreements.

Intimate Personal and Family Information

The right to privacy under the federal constitution attaches to concepts of family, marriage, and procreation.[57] The right to privacy under the common law and tort law attaches to highly personal and intimate information which might be damaging to an individual if disclosed.[58] These two notions taken together have provided the rationale for a number of courts to identify certain types of information as intimate personal and family information, which is covered by privacy exemptions.

Massachusetts' highest court listed marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights and reputation as the types of personal information that the privacy exception to the public records statute was designed to protect.[59] In a separate decision, the same court decided that medical statements, which contained considerable amounts of information about the award of individual pensions, were exempt from disclosure.[60]

The Supreme Court of New Mexico provided an even more expansive list of subjects which it felt were of an intimate and personal nature. Medical records and records related to illness, injury, disability, inability to perform job tasks, sick leave, letters of reference, documents concerning infractions, disciplinary actions, evaluations, notes on reasons for not rehiring and other supervisory opinions were the types of information that was too personal to be

disclosed in New Mexico.[61] While much of the information relates directly to intimate personal or family data, some of the types of information has been found to be disclosable in other states.

In Maine, a newspaper publisher sought disclosure of a termination agreement between the University of Maine and its former basketball coach. Portions of the document relating to the coach's medical condition or medical treatment were determined by the Maine Supreme Court to be exempt from disclosure under the state's freedom of information act.[62] West Virginia's highest court reviewed a request from parents to have access to a bus driver's medical records, where the bus driver's statements and actions had raised concerns about the driver's ability to drive the bus. While the court affirmed that medical records would normally be exempt from disclosure to the general public, the court did fashion a remedy which allowed the parents of students who rode the driver's bus, and only those parents, to have access to certain documents in the medical records.[63]

It is apparent, therefore, that an employee's medical information is generally not considered disclosable. Also, other types of information related to a person's medical condition, disability information, sick leave records providing specific medical information, and information about injuries tend to not be disclosable. Other types of

information which are considered intimate and personal, and therefore not disclosable, are data which relate to family matters, marriage, and procreation.[64]

Blanket Exemptions from Disclosure

In some states, statutory language or interpretation by the courts have created a blanket exemption from disclosure. For example, Mississippi, Illinois and Rhode Island exempt all personnel files from disclosure.[65]

The Pennsylvania Commonwealth Court decided that the contents of a teacher's personnel file maintained by the school district wasn't a minute, order or decision of the board, nor did it fix any rights, privileges, immunities, duties or obligations on the teacher. Thus, the personnel files were not public records under the right-to-know law, and were not disclosable.[66]

In an isolated case, a Florida appeals court blocked the public disclosure of personnel files of government employees, citing irreparable harm to the public interest.[67] Other Florida courts, however, have not reached the same conclusion and ordered release of personnel files.[68]

Blanket Requirements to Release Information

The North Dakota Supreme Court looked at a request by a parent to view a teacher's personnel file in its entirety. Participants were unsure of the parent's motivation and were unaware of any situation or dissatisfaction which precipitated the request. The school district originally

denied the request, and the parent asked the courts to force compliance. The state's highest court noted that the public record law for the state did not provide for a privacy

exemption like many other states, and required the district to disclose the entire personnel file.[69]

School districts in jurisdictions lacking a privacy exemption in their state's public records law are at a disadvantage. In the absence of a specific exemption for privacy, it may be more difficult for a school district to argue against disclosure. The Hovet court noted that if the legislature wanted to provide a privacy exemption, it could do so. But it was the job of the legislature, not the court, to create such an exemption.[70]

Information Filed Electronically

District recordkeeping practices vary, with some information in paper files and other information in electronic data files. The existence of personnel-related files, separate from employee personnel files, and the existence of electronic data files buried in computers complicates a full understanding of privacy and personnel files.

The courts tend to recognize an expanded definition of "personnel files." The federal exemption, which was copied in a variety of states, exempts "medical and personnel and similar files." What establishes the exemption is the

personal quality of the information in the file, not the physical nature of the file itself.[71] Further, the application of a freedom of information act does not turn on the physical existence of a file.[72]

Application of the freedom of information act and its exemptions does not depend upon the manner in which the file is kept. For example, a New York court ruled that the freedom of information act provisions, including exemptions, applied to tabulation of personal leave, even if the data was kept separately on a single document, with all employee's information in the same file.[73] It could be inferred, therefore, that the freedom of information act and its exemptions apply equally to information stored electronically.

There is no requirement for a public agency to create a file when it cannot be determined that a disclosable record already exists.[74] Therefore, a school district would not have to create a special program to retrieve data in a format specified by the member of the public requesting the information. If a program already exists to retrieve the personnel data, it would be subject to provisions of the freedom of information act. The district may charge for copies of records corresponding to the cost of production.[75]

Inactive and Deceased Employees

In a few cases, members of the public have wanted information on laid-off, retired, or deceased employees. A

review of the sample indicates that the same principles applying to the files of active employees apply to the files of laid off, retired, or deceased employees.

New York's highest court considered a request by a newspaper to obtain names, job titles, and salary levels of former employees who had been terminated as a result of budget reductions. The court ruled that such information was disclosable, even if it resulted in personal or economic hardship on the former employees.[76]

An association created to investigate government action related to pension funds and to lobby on behalf of retirees asked the courts in two jurisdictions to require school systems to release names and addresses of retired teachers. The courts ordered disclosure of the directory information.[77]

Clearly, directory information on inactive or deceased employees must be disclosed.[78] However, medical data on these employees may not be disclosed.[79] It can be concluded, therefore, that information on such employees is subject to the same disclosure requirements as information on active employees.

CONCLUSIONS AND POLICY IMPLICATIONS

Conclusions

Much more personnel-related information is disclosable than is not disclosable under freedom of information acts. Directory information like names,

addresses, job titles, and job descriptions are disclosable in most states. Payroll records, absence records, grievance summaries, college transcripts of employees, performance evaluations, application materials, resumes, files related to tenure decisions, reports on personnel supplied by private consultants, and settlement agreements have been found to be disclosable. Personal information like one's medical condition, injury, disability, and tendency toward substance abuse has been found to be of an intimate personal nature and not disclosable. Information relating to one's family, marriage, and procreation, are not disclosable under a federal constitutional right to privacy. A number of states (Mississippi, Illinois, and Rhode Island) have a blanket exemption from disclosure for personnel files. In at least one other state, North Dakota, its highest court has ruled that in the absence of a statutory exemption, all information in a personnel file must be disclosed.

School districts stand in a precarious position. They are required under freedom of information acts to release information that should be public information. Yet there is the danger of committing a state or constitutional tort by releasing too much information.

The climate of reform and increasing accountability will fuel the desire by many in the public to obtain information that was previously considered confidential and inviolate. School districts may no longer summarily refuse requests for information about their employees. There is

sufficient case law to indicate that requests for information about employees will be pursued in court, and that schools will likely have to give up more information than they desire. Consequently, it is in their best interest if school officials take steps to prepare before the first request comes. The way to prepare in advance is to direct action through policy. In that regard, a number of policy implications result.

Policy Implications

1. School districts need to make adequate preparation through policy for requests for information before they are received.
2. School districts must provide, in policy, the procedures which will be followed when requests for information are received.
3. School districts must revise the ways in which employee-related information comes into the district and take care to exclude information which is intimate and unrelated to the person's employment.[80]
4. School districts must reorganize personnel-related information already in the district files, in ways which reduce potential problems over disclosure. Again, information which is intimate and unrelated to a person's employment needs to be removed. Information which is intimate or highly personal but which is still employment-related should be separated from basic employment information. The district can then anticipate

giving free access to the basic information, but consider fighting to protect highly personal information which is employment-related.

NOTES

1. For a discussion of this issue as it existed prior to the general passage of open records acts, see Gee and Sperry, Education Law and the Public Schools: A Compendium (Boston: Allyn and Bacon, Inc., 1978).
2. Family Educational and Rights to Privacy Act, 20 U.S.C.A. Section 1232.
3. Several federal courts have required the release of directory information: Giltman v. N.L.R.B., 450 F.2d 670 (D.C.Cir. 1971); Simpson v. Vance, 648 F.2d 10 (D.C.Cir. 1980). One of the earliest state cases to require release of directory information was Board of School Directors of City of Milwaukee v. Wisconsin Employee Relations Commission, 168 N.W.2d 92 (Wis. 1969).
4. Timberline Regional Ed. Ass'n. v. Crompton, 319 A.2d 632 (N.H. 1974).
5. Pottle v. School Committee of Braintree, 482 N.E.2d 813 (Mass. 1985).
6. Browning v. Walton, 351 So.2d 380 (Fla. App. Ct. 1977); Warden v. Bennett, 340 So.2d 977 (Fla. App. Ct. 1976).
7. Hechler v. Casey, 333 S.E.2d 799, (W.Va. 1985).
8. Guard Pub. Co. v. Lane County School Dist. No. 4J, 774 P.2d 494, (Ore. App. 1989) rev. allowed 780 P.2d 735 (Ore. 1989).
9. Guard Pub. Co., etc., 791 P.2d. 854, 60 Ed. Law 973 (Ore. 1990).
10. Healy v. Teachers Retirement System, 558 N.E.2d 766 (Ill. App. 4 Dist. 1990).
11. Ill. Rev. Stat. 1989. Ch. 116, pars. 207 (1)(b)(i), (1)(b)(ii).
12. City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523 (Iowa 1980).
13. Eskaton Monterey Hospital v. Myers, 184 Cal. Rptr. 840 (Cal. Ct. App. 1982).
14. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. Ct. App. 1983).
15. Chambers v. Birmingham News Company, 552 So.2d 854 (Ala. 1989).
16. Board of Regents of the University System of Georgia v. Atlanta Journal, 378 S.E.2d. 305 (GA. 1989).

17. Penokie v. Michigan Technological University, 287 N.W.2d 304 (Mich. Ct. App. 1979).
18. Miller v. Incorporated Village of Freeport, 379 N.Y.S.2d 517 (N.Y. App. Div. 1976).
19. Redding v. Brady, 606 P.2d 1193 (Utah 1980); Redding v. Jacobsen, 638 P.2d 503 (Utah 1981).
20. Denver Post Corp. v. University of Colorado, 739 P.2d 874, (Colo. App. 1986).
21. Brogan v. School Committee of Westport, 516 N.E.2d 159 (Mass. 1987).
22. Kanzel Meyer v. Eger, 324 A.2d 307 (Pa. Commw. Ct. 1974).
23. Capital Newspapers Div. of Hearst Corp. v. Burns, 490 N.Y.S.2d 651, aff. 505 N.Y.S.2d 576 (N.Y. App. Div. 1985).
24. Bahlman v. Brier, 462 N.Y.S.2d 381 (N.Y. App. Div. 1983).
25. Klein Independent School District v. Mattox, 830 F.2d 576, cert. den. 108 S.Ct. 1473, (5th Cir. 1987).
26. Mills v. Doyle, 407 So2d. 348 (Fla. Dist. Ct. App. 1981).
27. United Federation of Teachers v. New York City Health and Hospitals Corporation, 428 N.Y.S.2d 823 (N.Y. App. Div. 1980).
28. Ollie v. Highland School District No. 203, 749 P.2d 757 (Wash. Ct. App. 1988).
29. Trahan v. Larivee, 365 So.2d 294 (La. Ct. App. 1978).
30. Connolly v. Bromery, 447 N.E.2d 1265 (Mass. App. Ct. 1983).
31. West Hartford Board of Education v. Connecticut State Board of Labor Relations, 460 A.2d 1255 (Conn. 1983).
32. Board of Education of Town of Somers v. Freedom of Information Commission, 556 A.2d 592 (Conn. 1989).
33. Collins v. Camden County Department of Health, 491 A.2d 66 (N.J. Super. L. 1984); Trenton Times Corp. v. Board of Education, City of Trenton, 351 A.2d 30, (N.J. Super. Ct. App. Div. 1976).
34. In re Gillespie, 348 N.W.2d 233 (Iowa 1984).
35. EEOC v. University of Pennsylvania, 110 S.Ct. 577 (1990).
36. Ibid., at 589.
37. Harris v. City of New York, Baruch College, 495 N.Y.S.2d 175 (N.Y. App. Div. 1985).
38. Tallahassee Democrat, Inc. v. Florida Board of Regents, 314 So.2d 164 (Fla. Dist. Ct. App. 1975).
39. Mellin v. City of Allentown, 430 A.2d 1048 (Pa. Commw. Ct. 1981).
40. Kneeland v. National Collegiate Athletic Association, 650 F.Supp. 1076, cert. denied 108 S.Ct. 72 (W.D. Tex. 1986).
41. Farrell v. Village Board of Trustees of Village of Johnson City, 372 N.Y.S.2d 905 (N.Y. App. Div. 1975).
42. Itasca County Board of Commissioners v. Olson, 372

N.W.2d 804 (Minn. Ct. App. 1985).

43. State ex rel. Tindal v. Sharp, 300 So.2d 750 (Fla. Dist. Ct. App. 1974).
44. Byron, Harless, Schaffer, Reid and Associates, Inc. v. State ex. rel. Schellenberg, 360 So.2d 83, quashed Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633 (Fla. Dist. Ct. App. 1978).
45. Pawtucket Teachers Alliance Local No. 920, AFT, AFL-CIO v. Brady, 556 A.2d 556 (R.I. 1989).
46. R.I. Gen. Laws, Sec. 38-2-2 (1956).
47. Booth v. Kalamazoo School District, 450 N.W.2d 286 (Mich. App. 1989).
48. Librach v. Cooper, 778 S.W.2d 351, (Mo. Ct. App. E.D. Div. 4 1989).
49. Guy Gannett Publishing Co. v. University of Maine, 555 A.2d 470 (Me. 1989).
50. VanderZyl v. Iowa Professional Teaching Practices Com'n, 397 N.W.2d 751 (Iowa 1986).
51. Miami Herald Publishing Co. v. Collazo, 329 So.2d 333 (Fla. Dist. Ct. App. 1976).
52. Anchorage School District v. Daily News, 779 P.2d 1191, (Alaska 1989).
53. See Fossey, "Confidential Settlement Agreements Between School Districts and Teachers Accused of Child Abuse: Issues of Law and Ethics." 63 Ed. Law 1(1990).
54. Brouillet v. Cowles Publishing Co., 791 P.2d 526 (Wash. 1990).
55. Ibid.
56. Ibid., at 528.
57. Bowers v. Hardwick 106 S.Ct. 2841, 2843-4 (1986).
58. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).
59. Attorney General v. Assistant Commissioner of Real Property, Department of Boston, 404 N.E.2d 1254 (Mass. 1980).
60. Globe Newspaper Co. v. Boston Retirement Board, 446 N.E. 2d 1051 (Mass. 1983).
61. State ex rel. Newsome v. Alarid, 568 P.2d 1236 (N.M. 1977).
62. Guy Gannett Publishing Co. v. University of Maine, 555 A.2d 470 (Me. 1989).
63. Child Protection Group v. Cline, 350 S.E.2d 541 (W.Va. 1986). A commentary on this case by Batson can be found at 36 Ed. Law 545 (1987).
64. Board of Education v. Lexington Fayette Urban County Human Rights Commission, 625 S.W.2d 109 (Ky. Ct. App. 1981).
65. Pawtucket Teachers Alliance Local No. 920, AFT, AFL-CIO v. Brady, Miss. Code Ann. Sec. 25-1-100; Ill. Rev. Stat. 1989. Ch. 116, pars. 207(1)(b)(i), (1)(b)(ii); 556 A.2d 556 (R.I. 1989).
66. West Shore School District v. Homick, 353, A.2d 93,

(Pa. Commwth. 1976).

67. Wisher v. News-Press Publishing Co., 310 So2d. 345 (Fla. Dist. Ct. App. 1975).

68. An example of a Florida court so holding can be found at Dade County School Board v. Miami Herald Pub. Co., 443 So.2d 268 (Fla. Dist. Ct. App. 1983).

69. Hovet v. Hebron Public School District, 419 N.W.2d 189 (N.D. 1988).

70. Ibid., at 193.

71. Diamond v. Federal Bureau of Investigation, 532 F.Supp. 216 (S. D. N. Y. 1981).

72. Morrison v. School Dist. No. 48, Washington County, 631 P.2d 784, rev. denied 642 P.2d 309 (Or. App. 1981).

73. Capital Newspapers Division of Hearst Corporation v. Burns, 490 N. Y. S. 2d 651, aff'd 505 N. Y. S. 2d 576 (N.Y. App. Div. 1985).

74. Board of Education, City of New Haven v. FOIC, 545 A.2d 1064 (Conn. 1988).

75. Hendricks v. Board of Trustees of Spring Branch Independent School District, 525 S.W.2d 930 (Tex. Ct. App. 1975).

76. Gannett Co., Inc. v. Monroe County, 411 N.Y.S.2d 557 (N.Y. 1978).

77. New York Teachers Pension Ass'n, Inc., v. Teachers' Retirement System of City of New York, 422 N.Y.S.2d 389 (N.Y. App. Div. 1979), 415 N.Y.S.2d 561 (N.Y.1979); State ex rel. Public Employee Retirees, Inc. v. Public Emp. Retirement System, 397 N.E.2d 1191 (Ohio 1979).

78. Calvert v. Employees Retirement System of Texas, 648 S.W.2d 418, ref. n.r.e., (Tex. Ct. App. 1983).

79. Globe Newspaper Co. v. Boston Retirement Board, 446 N.E. 2d 1051 (Mass. 1983).

80. See Horton and Corcoran, Preemployment Inquiries: Avoiding Pitfalls in the Hiring Process, (Topeka, KS: NOLPE, 1984).